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**ATTORNEYS FOR DEFENDANT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

DEIDRE AGAN, ) Cause No.: 1:19-cv-00083-SPW-TJC  
Plaintiff )  
vs. )  
BNSF RAILWAY CO., a ) **DEFENDANT'S MOTION FOR**  
Delaware corporation, ) **SUMMARY JUDGMENT**  
Defendant )  
)

## MOTION

Defendant, BNSF RAILWAY CO. (“BNSF”), by and through its attorneys of Knight Nicastro MacKay, LLC, hereby submits this *Motion for Summary Judgment* pursuant to Federal Rule of Civil Procedure 56(c) based on Plaintiff’s failure to disclose an expert witness necessary to prove the elements

1 of liability.<sup>1</sup> In the alternative, BNSF moves for partial summary judgment as it  
2 pertains to some of Plaintiff's allegations of negligence that should be dismissed  
3 because they are either preempted or precluded by federal law, do not legally  
4 apply to the allegations made in this case or Plaintiff submits no evidence to  
5 support the allegations alleged.

7  
8 Defendant submits a Brief in Support of its Motion.

9  
10 DATED this 10th day of September, 2020.  
11

12 KNIGHT NICASTRO MACKAY, LLC  
13

14 By:/s/ Anthony M. Nicastro  
15 Anthony M. Nicastro  
16 Chad M. Knight  
17 Steven T. Williams  
18 *Attorneys for Defendant*

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27 <sup>1</sup> BNSF acknowledges that Judge Knisely in the Montana 13<sup>th</sup> Judicial District *Weber* case  
denied a Motion for Summary Judgment at a final pretrial conference and stated it would  
issue an order stating the reasons why; however, no such order was ever issued by the Court.

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on this 10th day of September, 2020, I electronically  
3                   filed the foregoing with the Clerk of the Court using the CM/ECF system which  
4                   will send notification of such filing to the following:

5                   Russell D. Yerger  
6                   Yerger Law Firm, P.C.  
7                   2722 Third Avenue North, Suite 400  
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11                  Celia K. Douglas  
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17                  KNIGHT NICASTRO MACKAY, LLC

18                  By: /s/ Anthony M. Nicastro  
19                  Anthony M. Nicastro  
20                  *Attorneys for Defendant*